Criminal Appeal No. 58-DB of 1998

IN THE HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT CHANDIGARH

...

Date of Decision: February 22 , 2008.

Smt. Krishna and others **...** Appellants

VERSUS

State of Haryana **...** Respondents

1. Whether the Reporters of Local Newspapers may be allowed to see the judgment ?

2. To be referred to the Reporters or not ?

3. Whether the judgment should be reported in the Digest ?

CORAM :

HON'BLE MR.JUSTICE ASHUTOSH MOHUNTA.

HON'BLE MR. JUSTICE MOHINDER PAL.

Present: Mr. R.S.Cheema, Senior Advocate, with
Mr.Jasdev Singh, Advocate,
for the appellants.

Mr. S.S. Goripuria, Senior Deputy Advocate General,
Haryana.

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MOHINDER PAL, J.

Appellants Krishna wife of Krishan Banwari, Ram

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Singh son of Lal Chand, Karambir son of Ranjit Singh, Satbir son of Ranjit Singh, Sita Ram son of Ram Partap, Jagdish son of Mani Ram and Rattan Singh son of Moman have preferred this appeal against the judgment of conviction dated January 10, 1998 and the sentence order dated January 13, 1998, passed by the learned Additional Sessions Judge, Hisar. Appellants Rattan Singh, Sita Ram, Jagdish and Ram Singh were convicted under Sections 302/ 325/ 323/ 148 read with Section 149 of the Indian Penal Code (hereinafter referred to as `the Code') while appellants Krishna, Karambir and Satbir were convicted under Sections 325/323/148 read with Section 149 of the Code. Appellants Ram Singh, Sita Ram, Jagdish and Rattan Singh were sentenced to undergo rigorous imprisonment for life and to pay fine of Rs.2,000/- and in default thereof to undergo further rigorous imprisonment for two years under Section 302 read with Section 149 of the Code. All the seven appellants, namely, Krishna, Ram Singh, Karambir, Satbir, Sita Ram, Jagdish and Rattan Singh were sentenced to undergo rigorous imprisonment for three years and to pay fine of Rs.500/- and in default thereof to undergo further rigorous imprisonment for six months under Section 325 read with Section 149 of the Code. Under Section 323 read with Section 149 of the Code, all the seven appellants were sentenced to undergo rigorous imprisonment for one year. All the appellants were sentenced to undergo rigorous imprisonment for one year under Section 148 of the Code. The

substantive sentences of imprisonment were, however, ordered to run concurrently. Co-accused of the appellants, namely, Devender alias Surender son of Badri was acquitted by the trial by giving him the benefit of doubt.

The case of the prosecution, as unfolded in the statement dated June 18, 1992 (Exhibit P.A) of complainant Vijay Kumar, is that the complainant has five brothers. Ram Niwas is the eldest of the six brothers and complainant is the youngest. The father of the complainant had two brothers, out of whom Krishan Banwari had expired about ten years prior to the occurrence. Appellant Krishna is the widow of Krishan Banwari and she had six killas of land. The said land was being cultivated by the complainant etc. on payment of Rs.6,000/- per annum as lease money. Appellant Krishna was stated to be under the influence of appellant Ram Singh and at his instance she was interested to give the land in question on lease to some other person. It is stated that appellant Ram Singh conspired with appellant Rattan Singh and a week prior to June 18, 1992, Rattan Singh was sent by Ram Singh, under the influence of liquor, to the father of the complainant and he hurled abuses and asked the complainant party to relinquish the land belonging to appellant Krishna. Complainant and his father gave slap blows to Rattan Singh and he fled away.

On the night intervening 17th/18th June, 1992, at about 7 or 8 P.M, complainant and his father had gone to the fields

to guard `Jawar' crop and to irrigate the fields because their turn of water was to start at 3 A.M on 18th June, 1992. When the complainant and his father reached near the fields, they found appellant Krishna and her two brothers, namely, appellants Satbir and Karambir and appellants Rattan Singh and Ram Singh there. Appellants Krishna and Ram Singh called bad names to the father of the complainant and asked him not to enter the fields. She also said that she would herself cultivate the land. At this, the father of the complainant sent him back in order to avoid any conflict and asked him to come at 3 A.M to irrigate the fields. Then at about 3 A.M on June 18, 1992, the complainant, his brothers Ram Kumar, Subhash and Bhp Singh went to the fields, but they did not find their father in the fields. The accused-appellants were also not there. The complainant took his turn of water and also searched for his father, but he was not found. At about 9 A.M on June 18,1992, the complainant went to the Police Station and lodged the report. The present case was registered and investigated. Blood-stained earth and dragging signs were found in the fields. The police lifted blood-stained earth. The dead body of Mani Ram, father of the complainant, was recovered from the `Dhabi' (farm house) of appellant Rattan Singh. The inquest proceedings was conducted. The dead body was subjected to post-mortem examination in Civil Hospital, Fathead. The accused were arrested and at their instance the weapons of offense were recovered, which were taken into possession. After completion of

investigation, Chilean against the accused was put in Court.

In order to prove its case, the prosecution examined as many as nine witnesses, namely, Vijay Kumar- complainant (P.W.1), Dr.A.S.Chaudhary (P.W.2), OMB Parkas, Photographer (P.W.3), Jagdish, Patwari (P.W.4), Dinesh Kumar, an eye-witness (P.W.5), Bhagirath, brother of the complainant, another eye-witness (P.W.6), Ramesh Kumar, Assistant Assessment Clerk, Irrigation Branch (P.W.7), Inspector Prem Chand, (P.W.8) and Sub Inspector Surat Singh (P.W.9). Thereafter, the Public Prosecutor closed the prosecution evidence.

After the closure of the prosecution evidence, statements of the accused were recorded under Section 313 of the Code of Criminal Procedure in which they denied the prosecution allegations and pleaded innocence. They also tendered into evidence documents Exhibit D.A to D.G.

We have heard Mr. R.S.Cheema, Senior Advocate, assisted by Mr.Jasdev Singh, Advocate, appearing for the appellants and Mr. S.S. Goripuria, Senior Deputy Advocate General,Haryana, appearing for the State and have gone through the records of the case.

Learned counsel for the appellants, first of all, argued that Dinesh Kumar (P.W.5) and Bhagirath (P.W.6), the alleged eye-witnesses of the occurrence, were introduced later on. In fact, they had not seen the occurrence. Their names are neither mentioned in the First Information Report nor in the inquest

report. These witnesses did not make any efforts to intervene to rescue Mani Ram (deceased) from the hands of the accused. No injury was caused to these witnesses by the accused. The factum of tying Mani Ram with a rope with a `Talli' tree is not mentioned in their statements recorded under Section 161 of the Code of Criminal Procedure. He further argued that the learned Additional Sessions Judge has formed an opinion that Bhagirath (P.W.6) was an introduced witness and he had not seen the occurrence and that, in these circumstances, the testimony of Dinesh Kumar (P.W.5) cannot be severed from that of Bhagirath (P.W.6) since on each and every step Dinesh Kumar (P.W.5) is categorical that he was accompanied by Bhagirath (P.W.6). Further, the learned Additional Sessions Judge has condoned the withholding of the name of Dinesh Kumar (P.W.5), purportedly an eye-witness, on unjustifiable ground that the name of Dinesh Kumar was not disclosed at the earliest in the First Information Report because Vijay Kumar (complainant) might not be certain and definite about his capacity to give evidence before the Court. The second argument of the learned counsel for the appellants is regarding delay in lodging the First Information Report. The occurrence had taken place at 2.30 A.M on June 18, 1992 while the First Information Report was lodged at 9.30 A.M and that this delay has not been satisfactorily explained by the prosecution. Thirdly, learned counsel for the appellants argued that Jitender son of

appellant Krishna was admitted in P.G.I, Chandigarh, due to kidney trouble and he was on dialysis. Under these circumstances, it is unbelievable that she would hatch a conspiracy with his brothers appellants Karambir and Satbir to commit the murder of Mani Ram. Lastly, it was argued by the learned counsel for the appellants that there is no evidence to support the version of dragging of Mani Ram (deceased) given by Dinesh Kumar (P.W.5) and Inspector Prem Chand (P.W.8) as no photographs of dragging marks were taken nor the clothes of Mani Ram were found torn. According to the learned counsel, these infirmities in the prosecution case entitle the appellants to acquittal.

On the other hand, Mr.S.S.Goripuria, learned Senior Deputy Advocate General, appearing for the respondent-State has reiterated the stand taken in the trial Court. He argued that the present case is based on direct and circumstantial evidence. Dinesh Kumar (P.W.5) has categorically stated that on June 18, 1992, at about 2.30 A.M, he and his uncle Bhagirath had gone to the fields for irrigating the same when they found that Mani Ram (deceased) and the appellants were already there. He stated that appellants Ram Singh and Sita Ram were armed with `Lathis' while appellant Jagdish was armed with a `Fawra'. They were hurling abuses and were declaring that they would teach a lesson for not being allowed to cultivate the land of appellant Krishna. While so saying, they opened the attack upon Mani Ram. The accused, who were not

carrying any weapon, gave fist and slap blows to Mani Ram. Mani Ram fell down on the ground. Thereafter, appellant Krishna and her brothers appellants Karambir and Satbir went away towards the village. The other accused carried Mani Ram to the `Dhani' of appellant Rattan Singh while beating him in the process. The accused then tied Mani Ram with a `Talli' tree with a rope and belaboured him to death. He further argued that the appellants had motive to kill Mani Ram because he was in possession of the land of appellant Krishna for the last about ten years and was not interested to leave the same. The accused were interested in getting possession of the land and in preventing Mani Ram from cultivation of the same as lessee. The bone of contention was, thus, the agricultural land belonging to appellant Krishna. Learned Deputy Advocate General, Haryana, by referring to the evidence of Dr.A.S. Chaudhary (P.W.2), who had conducted post mortem examination on the dead body of Mani Ram and found four lacerated wound and multiple contusions and redness all over the back especially on buttocks and sacral region, argued that Mani Ram (deceased) was dragged by the accused, as deposed by Dinesh Kumar (P.W.5). Regarding delay in lodging the First Information Report, learned Deputy Advocate General, Haryana, contended that it was natural for complainant Vijay Kumar to first trace his missing father before lodging report in this regard before the police. He also argued that no explanation was given by appellant Rattan Singh as to under what circumstances

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the dead body of Mani Ram was recovered from his `Dhani' (farm house). He further highlighted that the blood-stained earth taken into possession by the police from near the dead body of Mani Ram and the rope were also found blood-stained. He further argued that due to defective investigation inasmuch as the drag marks etc. were not photographed, the accused were not entitled to acquittal.

At the outset, we may mention that so far as the involvement of appellants Krishna, Karambir and Satbir in the commission of the crime is concerned, the story as put forth by the prosecution is not trustworthy. At the relevant time, Jitender son of appellant Krishna was admitted in P.G.I, Chandigarh, due to kidney trouble and he was on dialysis. Later on, appellant Krishna donated her one kidney to her son, as has come on record in her statement made on January 13, 1998, before the trial Court when she was being heard on the quantum of sentence. Under these circumstances, it is unbelievable that she would hatch a conspiracy with his brothers appellants Karambir and Satbir to commit the murder of Mani Ram. The only allegation against Smt.Krishna is that she was under the influence of appellant Ram Singh and at his instance she was interested to give the land, which was in possession of the complainant-party as lessee, to some other person. This might be a cause of concern for the complainant-party and motive for appellant Ram Singh and his accomplices

to eliminate Mani Ram, but it cannot be said that by giving the land on lease to appellant Ram Singh or to someone else instead of the complainant-party, she could have got enough money which was required towards the expenses regarding transplantation of kidney of her son Jitender. The land in question was on lease with the complainant party for only Rs.6000/- per annum. Even according to Dinesh Kumar (P.W.5), the eye-witness, appellants Krishna, Karambir and Satbir were empty handed. No overt act has been attributed to them. They have been convicted and sentenced by the trial Court under Sections 325/ 323/ 148 read with Section 149 of the Code . It appears that appellant Krishna and her brothers Karambir and Satbir have been roped in because her land was in possession of the complainant-party and the bone of contention was this very land. The complainant party, in order to continue to remain in possession of the land, must have thought of implicating appellant Krishna and her brothers appellants Karambir and Satbir in this case. On the one hand, the allegation against appellant Krishana is that she was under the influence of appellant Ram Singh and, on the other hand, it has been alleged that she herself along with his brothers participated in making fatal attack on Mani Ram, brother of her late husband. Keeping in view the facts and circumstances of the case, we are of the considered view that participation of appellants Krishna, Karambir and Satbir in committing the

murder of Mani Ram is not free from doubt.

However, so far as the involvement of appellants Ram Singh, Sita Ram, Jagdish and Rattan Singh in the crime is concerned, the prosecution evidence against them is impeccable. There is direct evidence of Dinesh Kumar (P.W.5), who stated as under:-

> " On the night intervening 17/18.6.1992, at about 2.30 A.M, I and my uncle Bhagirath went to the field for watering the fields. When we reached there, we found that my paternal grand father Mani Ram was already there. Our land is situated in the revenue estate of Dhangar. We found that Krishna Devi, Rattan Singh, Ram Singh, Jagdish, Karambir, Sita Ram, Satbir, Devender alias Surender, present in the Court, were also there. Out of them, Ram Singh, Sita Ram, Surender were armed with Lathis. Accused Jagdish was armed with a `Fawra'. They were hurling abuses and were declaring that they would teach a lessons for not being allowed to cultivate the land of Krishna and for belabouring Rattan Singh some time ago. While so saying, they

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opened an attack upon Mani Ram. The accused who were not carrying any weapon, gave first and slap blows to Mani Ram, and the accused carrying weapons assaulted him with their respective weapons. My grand father Mani Ram fell down on the ground. Thereafter Krishna and her brothers Karambir and Satbir went away towards the village. While leaving the spot, they held out a threat that Mani Ram should be done to death. The other accused carried my grand father to the `Dhani' of Rattan Singh while beating him in the process. When we tried to intervene to save Mani Ram we were pushed back. It was a moon-lit night.

When we followed our grand father, the accused made us to sit there and threatened with injuries to our person if we raised a `Raula'. Then accused tied Mani Ram to a `Tali' tree with rope and belaboured him to death."

At the time of his deposition in the Court, Dinesh Kumar (P.W.5) was fifteen years old. He was subjected to a searching cross-examination but nothing could be elicited which

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could make the case of the prosecution doubtful against appellants Ram Singh, Sita Ram, Jagdish and Rattan Singh. His evidence gets corroboration from medical evidence. Dr.A.S. Chaudhary (P.W.2), who had conducted post mortem examination on the dead body of Mani Ram, had found four lacerated wounds and multiple contusions and redness all over the back especially on buttocks and sacral region, thus giving support to the ocular account given by Dinesh Kumar (P.W.5) that Mani Ram (deceased) was dragged by the accused.

Dr. A.S. Chaudhary (P.W.1) had observed the following injuries on the dead body of Mani Ram:-

> " 1. Lacerated wound 5 cm x 1 cm was present over back of skull .5cm above occipital prominence. Blood was clotted.
>
> 2. Lacerated wound ½ cm over left eye brow. On dissection, infiltration of blood was present in sub-cutaneous tissues. There was fracture of the occipital bone with laceration and contusion of the brain matter on the frontal and occipital region of the brain on the left side.
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> 3. Lacerated wound 5 cm x 2 cm was present over back of left hand. On dissection, fracture of the first carpal bone with

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infiltration of blood was present.

4. Lacerated wound 10 cm x 2 cm was present over front of left leg in middle. On dissection infiltration of blood was present.

5. Multiple contusions and redness was present all over back especially on buttocks and sacral region. On dissection, infiltration of blood was present in sub-cutaneous tissues and muscles. "

There was fracture of second, third, fourth ribs on right side and second and third on the left side of the thorax. There was contusion of the lung underneath. There was laceration of the left kidney. In the opinion of the Doctor, the cause of death was shock and haemorrhage because of multiple injuries to brain, lungs, kidney and infiltration of blood. All the injuries were ante mortem in nature and were sufficient to cause death in the ordinary course of nature. The probable time that elapsed between injuries and death was variable and between death and post mortem within 12 to 36 hours.

Presence of multiple contusions and redness all over back especially on buttocks clearly indicate that the victim was dragged before he was belaboured to death. Appellant Ram Singh had the motive to kill Mani Ram because he (Mani Ram) was in possession of his late brother Krishna Banwari's land on

lease and appellant Ram Singh was interested in getting possession of the land and in preventing Mani Ram from cultivating the same as lessee. The bone of contention was, thus, the agricultural land belonging to deceased's brother Krishna Banwari. Appellant Rattan Singh shared this common object and a week prior to the occurrence, he had gone to the `Dhani' of complainant Vijay Kumar under the influence of liquor and hurled abuses to Mani Ram (deceased) and told him to relinquish the land owned by Krishna (accused). Complainant Vijay Kumar and Mani Ram (deceased) gave fist blows to appellant Rattan Singh and made him to run from there. Appellant Rattan Singh was nursing a grudge against the complainant party for beating him. Appellants Sita Ram and Jagdish shared common object with appellants Ram Singh and Rattan Singh. Appellant Ram Singh was armed with `Lathi' and appellant Jagdish was armed with a `Fawra'. There was no reason for Dinesh Kumar (P.W.5) to substitute innocent persons in place of real culprits. All the four appellants, namely, Ram Singh, Sita Ram, Jagdish and Rattan Singh took active part in causing fatal injuries to Mani Ram. No explanation is available on record from appellant Rattan Singh as to under what circumstances the dead body of Mani Ram was recovered from his farm house.

So far as the argument of learned counsel for the appellants that names of eye-witnesses Dinesh Kumar (P.W.6)

and Bhagirath (P.W.6) were not mentioned in the First Information Report is concerned, we do not find any merit in the same. The First Information Report was lodged by Vijay Kumar (P.W.1) son of Mani Ram (deceased) mentioning therein that his father was missing. At that time, he did not know that his father had been murdered. Significantly, in the First Information Report, he did not even mention the names of appellants Sita Ram and Jagdish. He pointed the finger of doubt towards Krishna, Ram Singh, Rattan Singh, Satbir and Karambir. Participation of appellants Sita Ram and Jagdish in the commission of the crime came to light when P.W. Dinesh Kumar gave the eye-witness account of the occurrence. So, non-mentioning of the names of Dinesh Kumar and Bhagirath in the First Information Report does not at all affect the prosecution case. In these circumstances, delay in lodging the First Information Report also is not intentional. The incident occurred at about 2.30 A.M on June 18, 1992 while the First Information Report was lodged at 9.30 A.M. As complainant Vijay Kumar was searching for his father, he could not lodge the report earlier. It is not the defence version that Dinesh Kumar (P.W.5) had conveyed to his uncle Vijay Kumar (complainant) that he had seen the accused belabouring Mani Ram (deceased). In the cross-examination, a question in this regard was put to Dinesh Kumar (P.W.5) to which he replied thus:-

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> " We were made to sit at the `Dhani' of Rattan Singh till about 8.30 A.M. Till that time none from our house came to look up Mani Ram or us.

Viewed thus, delay, if any, stands explained in this case.

We have also carefully perused the statement of Bhagirath (P.W.6) and found the same inspiring. We do not concur the finding of the learned Additional Sessions Judge that he is an introduced witness. Bhagirath (P.W.6) is son of Mani Ram (deceased) and, undoubtedly, an interested witness. Except that he tried to make certain improvements in his statement recorded under Section 161 of the Code of Criminal Procedure, obviously out of his anxiety to bring the real culprits to book, otherwise his statement corroborates the statement of Dinesh Kumar (P.W.5) on all material particulars. His statement cannot be brushed aside simply for the reason that he is an interested witness. To discard the testimony of an eyewitness simply on the strength of his baffled answers to certain questions in cross-examination is not known to the administration of criminal justice. Testimonies of eye-witnesses would be preferable unless the circumstances provide so conclusive evidence as to rule out even the possibility of eye-witnesses' version to be true. Such is not the case here. As

discussed above, the circumstantial evidence lends full support to the ocular account. Medical version, as discussed above, also provides full corroboration to the ocular account.

As a result of the above discussion, we uphold the conviction and sentence order of appellants Ram Singh, Sita Ram, Jagdish and Rattan Singh and this appeal qua them is dismissed. We allow this appeal qua appellants Krishna, Karambir and Satbir, set aside their conviction and sentence and acquit them of the charges framed against them after giving them the benefit of doubt.

(ASHUTOSH MOHUNTA)
JUDGE

(MOHINDER PAL)
JUDGE

February 22, 2008.

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